IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 64067-4-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
JOSE A. ISIORDIA-PEREZ,	)	UNPUBLISHED
	)	
Appellant.	)	FILED: July 19, 2010
	)	
	)	

Cox, J. — Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime.[1] Here, because there was sufficient evidence upon which a rational trier of fact could find that the State proved all the essential elements of attempted indecent liberties beyond a reasonable doubt, we affirm.

C.G. and Rafael Mendez began dating sometime in 2007. They moved into an apartment together in August 2008. C.G. met Jose Isiordia-Perez through Mendez. The three were good friends.

On August 23, 2008, C.G. and Mendez had an argument at a friend's house. C.G. went home afterward and Mendez went out for the evening with Isiordia-Perez and some other friends.

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[1] State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993).

Around 2:30 a.m. on August 24, 2008, Isiordia-Perez called C.G. to ask whether she wanted to pick up Mendez at a bar in Kirkland or have him drive Mendez home. Isiordia-Perez agreed to bring Mendez home. He also told C.G. that Mendez did not love her.

C.G. and Isiordia-Perez spoke by phone two more times while he drove Mendez home. Mendez was sleeping in the car. C.G. testified that they spoke about her relationship with Mendez and that Isiordia-Perez suggested that she should leave Mendez because he did not love her. Isiordia-Perez testified that he asked C.G. to leave Mendez and give him a chance, and that C.G. agreed to think about it.

When Isiordia-Perez arrived at C.G.'s apartment complex, she came down to meet him and the two talked in the parking lot for over an hour while Mendez slept in the car. They continued to talk about C.G.'s relationship with Mendez, and Isiordia-Perez testified that he again asked her to leave Mendez and have a relationship with him.

Eventually they decided to wake Mendez and take him up to the apartment. C.G. went upstairs to her apartment and lay down on her bed while she waited for Isiordia-Perez to bring Mendez upstairs. She testified that the next thing she remembers is someone hugging her and that it was Isiordia-Perez.

C.G. testified that she jumped out of bed and asked Isiordia-Perez what he was doing. Isiordia-Perez stood between C.G. and the door and told her that

he wanted her to be intimate with him. C.G. told him no, and asked him to go wake up Mendez. Then Isiordia-Perez grabbed C.G. in a "bear hug" and again told her he wanted to be intimate with her and have oral sex with her. C.G. continued to say no and push him away. Then they fell onto the bed with Isiordia-Perez on top of C.G. C.G. pushed Isiordia-Perez away and was eventually able to "kick out" and free herself.

Isiordia-Perez left the apartment and went downstairs to wake up Mendez. After C.G. told Mendez what happened while he was sleeping, Mendez confronted Isiordia-Perez and told C.G. to call the police. Before the police arrived, Isiordia-Perez apologized for disrespecting C.G. and Mendez.

The State charged Isiordia-Perez with attempted indecent liberties. A jury convicted him as charged.

Isiordia-Perez appeals.

SUFFICIENCY OF EVIDENCE

Isiordia-Perez argues that there is insufficient evidence to support his conviction for attempted indecent liberties. He maintains that there was no evidence to show that he used force to overcome resistance and that therefore, the State failed to prove the element of "forcible compulsion." We disagree.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt.[2] "When the

[2] Id.

sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant."[3] "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom."[4] We defer to the trier of fact to resolve any conflicts in testimony, to weigh the persuasiveness of evidence, and to assess the credibility of the witnesses.[5]

In order to convict Isiordia-Perez of attempted indecent liberties, the State had to prove beyond a reasonable doubt that he knowingly took a substantial step to cause another person, not his spouse, to have sexual contact with him by forcible compulsion.[6] The jury was instructed that "forcible compulsion" is "physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to oneself or another person or in fear of being kidnapped or that another person will be kidnapped."[7]

Whether the evidence establishes the requisite resistance to support a finding of forcible compulsion "is a fact sensitive determination based on the totality of the circumstances, including the victim's words and conduct."[8]

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[3] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[4] Id.

[5] State v. Boot, 89 Wn. App. 780, 791, 950 P.2d 964 (1998).

[6] RCW 9A.44.100(1)(a).

[7] Clerk's Papers at 43; RCW 9A.44.010(6).

There is substantial evidence in this record that Isiordia-Perez knowingly took a substantial step toward having sexual contact with C.G. by forcible compulsion. He twice grabbed her in a bear hug, pinned her on the bed, and touched her "all over" while asking her to be "intimate" and to have oral sex with him.[9] C.G. had to repeatedly tell him "no" and push him away to prevent further contact. This is sufficient evidence for rational trier of fact to have found beyond a reasonable doubt that Isiordia-Perez took a substantial step toward having sexual contact with C.G. by forcible compulsion.

Isiordia-Perez argues that the force he used was not directed at overcoming resistance because C.G. was not physically resisting. He contends that C.G. repeatedly asked him to stop what he was doing, but that there is no evidence that he used force to overcome resistance.

At trial, Isiordia-Perez testified that he went up to the apartment and told C.G. to leave Mendez and become intimate with him. He testified that the only time he touched C.G. was to apologize for saying the things he said to her. He said that he touched her shoulder and tried to kiss her on the cheek.

Isiordia-Perez cites State v. Ritola[10] to support his argument. This is unpersuasive.

In Ritola, the defendant, a juvenile resident at a group home for boys,

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[8] State v. McKnight, 54 Wn. App. 521, 526, 774 P.2d 532 (1989).

[9] Id.

[10] 63 Wn. App. 252, 817 P.2d 1390 (1991).

suddenly grabbed his counselor's breast and squeezed it.[11] The court found this was not indecent liberties because "the evidence does not support a reasonable inference that the force used by Ritola was directed at overcoming resistance, or that such force was more than that needed to accomplish sexual touching."[12]

Ritola is distinguishable from the facts of this case. In that case, the defendant caught the victim by surprise, touched her breast, and removed his hand by his own volition. Here, on the other hand, C.G. testified that she repeatedly told Isiordia-Perez to stop touching her, that she pushed him away from her, that she tried to lift his head away from her, and that she used her feet to push him away from her. This is sufficient to show that he used forcible compulsion, as the statute requires.

STATEMENT OF ADDITIONAL GROUNDS

In his statement of additional grounds for review, Isiordia-Perez claims that he was denied the right to a speedy trial, protection against self-incrimination, and due process.

With respect to Isiorda-Perez's contention that he was denied the right to a speedy trial, there is no evidence in the record to support this argument. We do not consider matters outside the record in a direct appeal.[13] With respect to Isiordia-Perez's other claims, they are too general and lacking in specifics to

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[11] Id. at 253.

[12] Id. at 255-56.

[13] State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

warrant further consideration.

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

Spearman, J.

Leach, A.C.J.